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AT

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 710

Case No. 779: KHALIDI ET AL

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL,

Composed of: Mr. Samar Sen, Vice-President, presiding; Mr. Hubert Thierry; Mr. Francis Spain;

Whereas, on 31 January 1994, Rasmiyeh Mahmoud Abu Gheida, Nariman Salim Khalidi, Nahla Ibrahim Khatib, Nadia Tewfiq Madi, Bedayah Bashir Murad and Muti'a Mohammed Saleh, all area staff members of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, hereinafter referred to as UNRWA, filed an application containing the following pleas:

"SECTION II PLEAS

Applicants respectfully pray the esteemed Tribunal to hold the following decisions:

1. Rescinding the decision of the Commissioner-General comprised in ...

2. Considering the Applicants' period of service under X category as

period of service qualifying for termination indemnity.

3. Applying the United Nations operational rate of exchange of US$ 1 = LS[Syrian pounds] 11.20 for the purpose of payment of termination indemnity due to the Applicants for the periods prior to 30 May 1992.

4. Warranting the Applicants to opt for early voluntary retirement at the age of 50 years, or at having 25 years of qualifying service.

5. Applying the UN operational rate of exchange prevailing during every given period of time of qualifying service after 30 May 1992, on the basis of salary on termination.

6. Payment of legal counselling and secretarial fees estimated at US$ 2,000."

Whereas the Respondent filed his answer on 23 June 1994;

Whereas the Applicants filed written observations on 31 August 1994;

Whereas the Applicants filed an additional document on 24 June 1995;

Whereas the Tribunal put questions to the Respondent on 10 July 1995, to which the Respondent replied on 13 July 1995 and on which the Applicants submitted comments on 15 and 17 July 1995;

Whereas, on 18 July 1995, the Respondent filed additional comments;

Whereas, on 25 July 1995, the Applicants filed additional comments;

Whereas the facts in the case are as follows:

The Applicant Abu Gheida was recruited by UNRWA as a teacher grade 05 (category X) on 23 September 1965 under a fixed-term contract which expired on 31 August 1967.

The Applicant was subsequently re-employed as a teacher on a temporary assistance basis from 10 to 31 October 1967. On 1 November 1967, the Applicant was given a fixed-term appointment expiring on 31 August 1968.

The Applicant was again re-employed as a teacher for a fixed term from 1 September 1968 to 31 August 1969. Her appointment was then extended until 31 August 1970 and was subsequently converted to a temporary-indefinite appointment, with a category change from category X to category A, beginning 1 September 1969, which was considered her service computation date.

The Applicant Khalidi was recruited by UNRWA as a teacher grade 05 (category X) on 13 October 1965 under a fixed-term contract which expired on 31 August 1967.

The Applicant was subsequently re-employed as a teacher on a temporary assistance basis from 10 to 31 October 1967. On 1 November 1967, the Applicant was given a fixed-term appointment expiring on 31 August 1968.

The Applicant was again re-employed as a teacher for a fixed term from 1 September 1968 to 31 August 1969. Her appointment was then extended until 31 August 1970 and was subsequently converted to a temporary-indefinite appointment, with a category change from category X to category A, beginning 1 September 1969, and her service computation date was fixed at 1 September 1968.

The Applicant Khatib was recruited by UNRWA as a teacher grade 05 (category X) on 21 September 1965 under a fixed-term contract which expired on 31 August 1967.

The Applicant was subsequently re-employed as a teacher on a temporary assistance basis from 30 September to 31 October 1967. On 1 November 1967, the Applicant was given a fixed-term appointment expiring on 31 August 1968.

The Applicant was again re-employed as a teacher for a fixed term on 1 September 1968. Her appointment was subsequently converted to a temporary-indefinite appointment, with a category change from category X to category A, beginning 1 September 1969, and her service computation date was fixed at 1 September 1968.

The Applicant Madi was recruited by UNRWA as a teacher at grade 05 (category X) on 28 September 1965 under a fixed-term contract which expired on 31 August 1967.

The Applicant was subsequently re-employed as a teacher on a temporary assistance basis from 10 to 31 October 1967. On 1 November 1967, the Applicant was given a fixed-term appointment expiring on 31 August 1968.

The Applicant was again re-employed as a teacher for a fixed term from 1 September 1968 to 31 August 1969. Her appointment was subsequently converted to a temporary-indefinite appointment, with a category change from category X to category A, retroactive to 1 September 1968, which was considered her service computation date.

The Applicant Murad was recruited by UNRWA as a teacher grade 05 (category X) on 25 September 1965 under a fixed-term contract which expired on 31 August 1967.

The Applicant was subsequently re-employed as a teacher on a temporary assistance basis from 9 to 31 October 1967. On 1 November 1967, the Applicant was given a fixed-term appointment. She left UNRWA service on 31 August 1968.

The Applicant was again re-employed as a teacher for a fixed term on 1 September 1968, which was considered her service computation date.

The Applicant Saleh was recruited by UNRWA as a teacher grade 05 (category X) on 22 September 1965 under a fixed-term contract which expired on 31 August 1967.

The Applicant was subsequently re-employed as a teacher on a temporary assistance basis from 13 September to 19 October 1967 and from 21 to 31 October 1967. The Applicant was given a fixed-term appointment from 1 November 1967 to 31 August 1968.

The Applicant was again re-employed as a teacher for a fixed term on 1 September 1968. Her appointment was then converted to a temporary-indefinite appointment, with a category change from category X to category A, retroactive to 1 September 1968, which was considered her service computation date.

On 18 February 1991, the Applicant Khalidi wrote to the Regional Director to request that her service computation date be moved back from 1 September 1968 to 13 January 1965. In a reply dated 11 March 1991, the Acting Regional Director rejected her request on the grounds that she had not, at the time the offer had been available to her, exercised the option which the Administration had offered to staff in the circular dated 30 June 1980 to include prior service for the purpose of establishing the service computation date.

On 5 January 1992, the Administration issued circular No. 17/92, designed to enable Syrian area staff who had completed 25 years of service or had reached the age of 50 to submit an application before 6 February 1992 to exercise a voluntary early retirement option as from 29 February 1992 and to have their retirement pensions computed at the United Nations operational rate of exchange, which was one United States dollar to 11.20 Syrian pounds.

On 24 January 1993, the Applicants Abu Gheida, Khatib, Madi, Murad and Saleh and, on 18 February 1993, the Applicant Khalidi, wrote to the Regional Director requesting that their earlier periods of service be taken into account and that the official United Nations exchange rate (US$ 1 to SL 11.20) be applied to them.

In replies dated 25 January and 11 February 1993, the Director of UNRWA Affairs informed the Applicants of the following:

> "1. We have investigated the claims made in your letter of 24 January 1993. On 21 January 1980, the administration issued a circular to all concerned staff members stating:
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> > 'In paragraph 7 of Annex 5 of the Memorandum of Understanding dated 23 October 1979, the Agency agreed to recognize prior daily-paid service (without a significant break in service) for purposes of calculating separation benefits provided that the staff members involved repay the Agency any separation benefits received in respect of their earlier service at the time of conversion of their service from daily-paid to monthly-paid manning table

service. This agreement applies as from 9 November 1979, the date of signing of the Memorandum of Understanding, and shall apply to any staff who left the Agency's service after that date but prior to the implementation of this agreement.

Staff members who have not already submitted to Field Personnel Officer a claim for recognition of such service and who think they are entitled to make such a claim should do so before 28 February 1980 giving details of the period of service they wish to have recognized. Claims received after 28 February 1980 will normally be rejected.'

2. Many staff members at that time accepted the offer. According to our records, you did not apply to have your prior service recognized. ..."

The Applicants Khalidi, Khatib and Madi filed appeals before the Area Staff Joint Appeals Board on 22 February 1993. The Applicant Abu Gheida filed her appeal on 1 March 1993, and the Applicant Murad filed an appeal on 9 March 1993. The Board adopted its reports on these cases in October 1993. Its recommendation regarding this group of cases is as follows:

"V. Recommendation

... In view of the foregoing, and without prejudice to any further oral or written submissions to any party that the Appellant may deem pertinent, the Board unanimously makes its recommendation to uphold the Administration's decision not to recognize the Appellant's earlier UNRWA service prior to her re-appointment effective 1 September 1968 for purposes of qualifying service under Area staff rule 109.2 and SAR staff circular No. 17/92; and that the case be dismissed.

However, with a view to the possibility that the Appellant might not have been notified of the staff circular of 30 June 1980, particularly in the absence of documented evidence to that effect, the Board also wishes to recommend that the Appellant's case be given further consideration by the Administration."

On 15 November 1993, the Officer-in-Charge, Headquarters, forwarded to the Applicants a copy of the report of the Joint Appeals Board informing them of the following:

"You will note that the Board concluded that the Administration dealt with your case within the framework of standing rules and directives concerning employment, early voluntary retirement, and service computation date without allowing any extraneous or unrelated factors to affect its decision. Based on this conclusion, the Board unanimously makes its recommendation to uphold the Administration's decision not to recognize your earlier UNRWA service prior to your re-appointment effective 1 September 1968 for purposes of qualifying service under Area staff rule 109.2 and SAR staff circular No. 17/92, and that your case be dismissed. However, with a view to the possibility that you might not have been notified of the Staff Circular of 30 June 1980, in which staff members were invited to exercise the option to include their prior service for the purpose of establishing a service computation date, the Board also recommends that your case be given further consideration by the Administration.

I accept the conclusion of the Board concerning the proper manner in which the Administration dealt with your case, and based upon this conclusion, the Board's recommendations concerning non-recognition of your prior UNRWA service for the purposes stated, and dismissal of your case. As to the Board's further recommendation, having taken into account the Board's request for 'further consideration', I do not find any justification to vary the Administration's decision, which the Joint Appeals Board has unanimously recommended should be upheld."

On 31 January 1994, the Applicants filed with the Tribunal the application referred to above.

Whereas the Applicants' principal contentions are:

1. The Administration's refusal to recognize the period of service prior to the Applicants' re-appointment as qualifying service for early retirement was incompatible with the definition set forth in the Staff Regulations and Rules.

2. The Applicants were not aware of the option offered to the staff in 1980 regarding the opportunity to have their re-appointment converted to reinstatement so that their prior service could be taken into account for the purpose of computing their qualifying service for early retirement.

3. The Respondent should not have denied the Applicants their right to opt for early retirement under the terms of circular 17/92 of 5 January 1992, even if they have not complied with the time-limits set in that circular.

4. The Respondent violated the acquired rights of the Applicants by changing the exchange rate used to calculate their retirement benefits.

Whereas the Respondent's principal contentions are:

1. The method used by the Administration to compute the period of service for purposes of determining entitlement to retirement benefits was in conformity with the Staff Regulations and Rules and Personnel Directives.

2. The method was in conformity with personnel directive A/4, which stipulates that in the case of re-appointment, as contrasted with reinstatement, the staff member is not required to repay the separation payments which he received at the time of his earlier separation. The service computation date is the same as the date of re-appointment.

3. The Applicants' failure to file their applications within the time-limits set by circular 17/92, for which no explanation was provided, was their own fault.

4. The concept of acquired rights does not apply to statutory terms of employment, which include the establishment of an exchange rate for the Organization.

The Tribunal, having deliberated from 10 to 28 July 1995, now pronounces the following judgement:

I. The applications filed by Ms. Khalidi, Ms. Abu Gheida, Ms. Khatib, Ms. Madi, Ms. Murad and Ms. Saleh all have the same purpose and are based on the same arguments. The Tribunal therefore orders the joinder of these applications and will rule on them in a single judgement.

II. The applications were made on the basis of circular No. 17/92 of 5 January 1992 issued by the Director of UNRWA Affairs in the Syrian Arab Republic in view of a change in the organization's exchange rate (UNRWA book rate). Owing to the fact that this new book rate, as compared with the previous rate, would be disadvantageous to staff members, those who had reached 50 years of age or completed 25 years of service were given the opportunity to opt for early retirement and receive benefits at the more favourable exchange rate.

The Applicants did not take advantage of this offer within the required time-limit (before 29 February 1992), because they did not have 25 years of service, i.e. qualifying service, computed from the date of entry into service, referred to as the "service computation date". In fact, in September 1968 the Applicants were given fixed-term contracts which were taken into consideration for the purpose of determining their date of entry into service. Those contracts were subsequently converted into temporary-indefinite contracts.

III. However, between September and October 1965 and 31 August 1967, the Applicants had already been employed by UNRWA under category X fixed-term (monthly-paid service). Upon the expiration of those contracts, they received the separation benefits provided for in the Rules. They were then re-employed in November 1967 until August 1968 and they received, as in the past, separation benefits corresponding to that period of service.

IV. Under the terms of a circular issued on 21 January 1980 (personnel directive A/4), complemented by a circular of 30 June 1980 (A/81/80), UNRWA staff members who had previously been employed in category X were given the opportunity to include their years of service prior to their re-employment when computing their qualifying service, on condition that they repaid the separation benefits received in respect of those prior periods of employment.

V. The Applicants did not take advantage of this option and claim either to have had no knowledge of the relevant circulars or to have been inadequately informed of their content. Moreover, they contest that the circulars were applicable to them since they concerned staff members whose service had been interrupted for a period of more than 12 months, which was not their case.

The Applicants are therefore requesting that they be allowed to take advantage of the offer made in circular 17/92 of 5 January 1992 to have their years of service from 1965 to 1968 included, a posteriori, in computing their qualifying service.

VI. The Respondent notes that the Applicants failed to accept the offer made in the relevant 1980 circulars. The Respondent also points out that in 1968 they were re-appointed, not reinstated, which would have entailed the repayment of separation benefits and the readjustment of their service computation date. That date would have been set at the beginning of their employment by virtue of their category X contracts.

Lastly, the Respondent maintains that if the 1980 circulars did not apply to the Applicants, they would have no right to include their service prior to their re-appointment and the UNRWA Administration would be under no obligation to offer them that option. However, the Respondent adds that he considers that the circulars did indeed apply to them.

VII. The Tribunal was satisfied with the information provided by the Respondent at its request concerning the publicity of the circulars issued in 1980 and noted that a significant number of staff members (215) had taken advantage of the offer made in those circulars. Consequently, the Tribunal cannot accept the Applicants' contention that they were not properly informed.

VIII. On the other hand, if one accepts that the 1980 circulars did not apply to the Applicants, it appears that in any event, they had not met the requirement for reinstatement,

namely the repayment of separation benefits received for their periods of employment prior to 1968.

IX. Lastly, the Tribunal does not allow that the Applicants had any acquired right to the application of the previous UNRWA rate after 1 June 1992 (date of the entry into force of the new operational exchange rate).

X. For all of the foregoing reasons, the application is rejected.

(Signatures)

Samar SEN
Vice-president, presiding

Hubert THIERRY
Member

Francis SPAIN
Member

Geneva, 28 July 1995

R. Maria VICIEN-MILBURN
Executive Secretary